

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4104 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 YES; 2 to 5 NO

GB BHRAHMBHATT SINCE DECD. THRO HEIRS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4104 of 1996
MR AK CLERK Advocate for Petitioner No. 1
MR BS PATEL Advocate for Petitioner No. 1/1-1/6
MR RC KODEKAR AGP for Respondent No. 1
MR JB PARDIWALA Advocate for Respondent No. 2
LAW OFFICER BRANCH for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 21/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The original petitioner (since deceased), who had retired as District Judge and was re-employed as

Registrar for the period from 1.8.1992 to 31.1.1993, has challenged the order dated 2.1.1996 at Annexure-C to the petition by which the State Government rejected his request for computing the period of his re-employment towards pensionable service.

2. Prior to his retirement as District Judge with effect from 31.7.1992, the original petitioner was placed on deputation as Registrar of the High Court with effect from 11.5.1992. He came to be re-employed for a period of six months from 1.8.1992 as Registrar in the High Court by the order of the Honourable Chief Justice made under Article 229 of the Constitution. According to the petitioner, this period of six months was required to be treated as notional extension of service and the petitioner's case came to be recommended by the High Court for granting the benefit of Rule 284 of the Bombay Civil Services Rules, 1959 (BCSR). The letter of the High Court dated 24.8.1992, a copy of which is placed on record, indicates that the petitioner's case was recommended for treating the period of his re-employment from 1.8.1992 to 31.1.1993 as duty counting for pension as the High Court had granted notional extension of judicial service to the petitioner for that period. In the process, the High Court had also pointed out the notional extension of service given to a past employee who had retired as a Judge of the City Civil Court and was re-employed and given notional extension of service for the period that he served as a Joint Charity Commissioner. According to the petitioner, his case was exactly similar to that of Messrs. J.M.Thaker and R.M.Christie who were given similar benefit of computing the period of their notional extension of service for pension. There is no dispute about the fact that the petitioner was re-employed from 1.8.1992 for a period of six months after the date of his retirement, i.e. 31.7.1992. The question is whether this period of re-employment should count towards pensionable service of the original petitioner.

3. Under Rule 9 (42) of the Bombay Civil Service Rules, which are applicable to the case of the petitioner, pensionable service is defined so as to mean the service which qualified the government servant performing it to receive a pension from the consolidated fund. Section III of Chapter XI of the said Rules deals with pensionable service and as per Rule 230, unless in any case it be otherwise distinctly provided by or under these rules, a government servant is in pensionable service if he holds substantively a permanent post in government service or holds a lien on such a post or if his lien on such a post has been suspended under Rule 19. Under Rule 282 (B), a provision is made as to how the amount of a government servant's pensions shall be calculated. Under Rule 284 (a), it is stated that the scales of pensions prescribed by Rule 282 are applicable to the superannuation pensions of all government servants subject to these rules. Clause (b) of Rule 284 makes a provision for addition in pensionable service for the purpose of calculating superannuation pension to the duty performed in the cases mentioned therein. In the Exception to this Clause, it is stated that the concession under that Rule would apply even to a government servant whose whole pensionable service has been rendered in a post or service mentioned thereunder though he may have entered service after 3.8.1931. Clauses (ii) and (iii) of Rule 284 make a provision for higher addition of past service in case of certain posts mentioned therein.

4. We may now refer to Rule 327 which seems to have been overlooked by the authorities while considering the case of the original petitioner. Rule 327 reads as under:

"R.327. Unless in any case it be otherwise distinctly provided in this section, a government servant who has received a pension on retirement shall not, if re-employed in government service, be permitted to count his new service as qualifying for a second pension. If the new service is pensionable, it must be combined for the purpose of calculating pension with the service previously rendered and the whole treated as one service."

On examining this Rule, the learned counsel for the respondent authorities fairly submitted that it was

squarely applicable to the petitioner's case and that it was overlooked, and the matter was considered in the context of Rule 284 of the BCSR. The recommendation of the High Court was clearly to the effect that the period of re-employment of the original petitioner from 1.8.1992 to 31.1.1993 should be counted as duty for the purpose of pension.

5. There is no dispute about the fact that the service in the post of Registrar in which the original petitioner was re-employed was pensionable service. Therefore, the period of six months of re-employment of the original petitioner was required to be combined with the service rendered by him till the date of his retirement for the purpose of calculating the pension and the whole was required to be treated as one service. In this view of the matter, the impugned order of the State Government dated 2.1.1996 at Annexure-C to the petition cannot be sustained and is hereby set aside with a direction to the respondent No.1 to treat the period of re-employment of the original petitioner from 1.8.1992 to 31.1.1993 as duty counting for pension and combine it for the purpose of calculating the pension with the service previously rendered by him and treat the whole period as one service.

6. We direct that necessary re-fixation of pension will accordingly be done by the respondent No.1 within two months from today and the difference payable to the original petitioner will be calculated accordingly and paid to the petitioners within the said period. Rule is made absolute accordingly with no order as to costs.

Sd/-

(R.K.Abichandani, J.)

Sd/-

(D.H.Waghela, J.)
(KMG Thilake)